

ORIGINAL

OFFICIAL FILE

ILLINOIS COMMERCE COMMISSION

STATE OF ILLINOIS COMMERCE COMMISSION

2006 MAR -9 A 10: 59

ST. LOUIS PIPELINE CORPORATION

CHIEF CLERK'S OFFICE

Petition pursuant to Sections 8-503,)
8-509, 15-101 and 15-401 of the Public)
Utilities Act for a certificate authorizing)
operation as a common carrier by pipeline,)
and for entry of an order authorizing)
and directing construction and operation)
of a petroleum pipeline and granting)
authority to exercise eminent domain.)

Docket No.: 02-0664

REPLY BRIEF OF THE METRO EAST SANITARY DISTRICT

Now comes METRO EAST SANITARY DISTRICT, a municipal corporation, ("MESD")
by its undersigned attorney, and for its Reply Brief, states as follows:

INTRODUCTION

St. Louis Pipeline Corporation has for many years been operating an approximately 22.5 mile pipeline between Hartford-Wood River, Illinois and Lambert International-St. Louis Municipal Airport. (Informational Packet, filed 10/11/02). The pipeline carries jet fuel to Lambert airport. Approximately 8 miles of the pipeline is within the State of Illinois. The pipeline was originally constructed in 1969 and has been maintained since that date pursuant to agreements negotiated with various landowners. (Petition, ¶ 3). St. Louis Pipeline, or its predecessors in interest, had an easement agreement with the MESD, and said easement expired by its terms in 1995. (Petition, ¶ 4). St. Louis Pipeline alleges that it is maintaining its pipeline under and through all other real property in Madison County, Illinois pursuant to valid agreements with landowners. (Petition, ¶ 3). Apparently, the original construction of the pipeline did not require the use of eminent domain.

On or about July 1996, after its easement with MESD expired, St. Louis Pipeline relocated a portion of its pipeline through real property owned by MESD. (Informational Packet, filed

10/11/02). This relocation was purportedly directed by the State of Illinois Department of Transportation. (Petition, ¶ 4).

At that time, St. Louis Pipeline did not renew its easement with the MESD, did not obtain a certificate pursuant to Section 15-401 of the PUA from the Illinois Commerce Commission ("the Commission"); and did not seek an order from the Commission authorizing it to construct, install and maintain the relocated pipeline. Instead, it constructed the pipeline through MESD's property without obtaining an easement from MESD, without authorization from the Commission, and continues to operate the pipeline without a certificate of good standing to operate as a common carrier by pipeline from the Commission, which is explicitly required by the PUA. Section 15-401(a) clearly provides that:

No person shall operate as a common carrier by pipeline unless the person possesses a certificate in good standing authorizing it to operate as a common carrier by pipeline. No person shall begin or continue construction of a pipeline...for use in operations as a common carrier by pipeline unless the person possesses a certificate of good standing.

By its own admissions, St. Louis Pipeline has operated and profited for many years without the required certificate of good standing, has constructed pipelines without a certificate of good standing and without first seeking the Commission's permission, and has continuously trespassed on MESD's property without compensation to the MESD.

ST. LOUIS PIPELINE CORPORATION'S REQUEST FOR CERTIFICATE OF GOOD STANDING

I. COMMON CARRIER CERTIFICATE REQUIREMENTS

Section 15-401(b) sets forth the statutory requirements that must be met prior to the issuance of a certificate of good standing by the ICC as follows:

(b) Requirements for issuance. The Commission, after a hearing, shall grant an application for a certificate authorizing operations as a common carrier by pipeline, in whole or in part, to the extent that it finds that the application was properly filed; a public

need for the service exists; the applicant is fit, willing, and able to provide the service in compliance with this Act, Commission regulations, and orders; and the public convenience and necessity requires issuance of the certificate.

...

A. Fit, Willing, and Able

In its answer to Staff Data Request 12, St. Louis Pipeline defined the term “fit, willing, and able” as:

the “willingness and ability of The Company to operate pursuant to all applicable statutes and regulations. This includes substantial compliance, in the past, by The Company with all applicable statutes and regulations. This also includes the fact that The Company possesses the equipment, facilities, financial resources, knowledge, and experience to provide the proposed service in compliance with applicable statutes and regulations.

Staff’s Initial Brief seems to have adopted a broader definition of this requirement. Staff sees the “willing” requirement as satisfied by the mere initiation of this proceeding. Quite frankly, MESD anticipated a more objective view of the requirements from Staff. MESD does not necessarily object to St. Louis Pipeline Corporation’s Petition for a certificate of good standing. However, as a property owner, MESD feels that it is the Commission’s duty to scrutinize petitions for good standing, not to rubber-stamp them. The requirements of Section 15-401(b) should not be glossed over. Since the record has been developed on these issues and solely in order to provide the Commission with a more objective view of the same, MESD points out the following arguments.

St. Louis Pipeline alleges in its Petition that it has substantial assets and substantial experience in the operation of petroleum pipelines, and that it is fit, willing, and able to operate and provide service as a common carrier by pipeline in compliance with the provisions of the PUA and Commission rules, regulations, and orders. (Petition, ¶9). However, the evidence before the Commission clearly demonstrates the contrary, and St. Louis Pipeline’s actions in this regard speak louder than its words.

MESD does not doubt that Petitioner has substantial assets. It is the other requirements of Section 15-401(b) that need to be addressed by the Commission. The evidence is uncontradicted that since at least 1996, St. Louis Pipeline has conducted its pipeline operations with a complete indifference to the PUA, Commission regulations and orders. By its own admissions, St. Louis Pipeline has operated and profited for many years without the required certificate of good standing, has constructed and relocated pipelines without first seeking the Commission's permission, and has continuously trespassed on MESD's property without compensation to the MESD. St. Louis Pipeline's record in this regard shows that in the past it has not been in "substantial compliance" with the PUA. St. Louis Pipeline has offered no explanation of its failure or refusal to comply with the clear statutory requirements as set forth above. This repeated failure or refusal to comply with the statutes, regulations and orders demonstrates that St. Louis Pipeline is unfit, unwilling, or unable to operate its pipelines according to the rules, and does not respect the rights of property owners through which its pipeline runs.

The evidence shows that St. Louis Pipeline has been operating as a pipeline within this State for many years in total disregard to the PUA. It has done so without the required certificate, and has constructed its pipeline without first seeking authority. The fact that St. Louis Pipeline initiated this proceeding does not cure its past noncompliance. In fact, the only reason for St. Louis Pipeline bringing the instant Petition at this time is to seek condemnation authority over MESD's property. As Petitioner stated in its Initial Brief, to it, "This case is about money." To St. Louis Pipeline, it is not a case about finally following the statutory requirements to operate a pipeline within the State of Illinois.

It is a reasonable inference that had St. Louis Pipeline and MESD been able to reach an agreement concerning an easement over MESD's property, St. Louis Pipeline would not have sought

the required certificate of good standing even at this late date. The Commission should not allow St. Louis Pipeline, or any other public utility, to disregard the PUA, Commission regulations and orders when they pose an inconvenience, then allow that same utility to condemn property under the auspices of the Commission and the State of Illinois.

B. Public Need

The plain language of section 15-401(b) also directs the Commission to determine if a public need exists, and whether the public convenience and necessity requires the proposed service, when considering every application submitted. *Lakehead Pipeline Co., Ltd. Pshp. v. Illinois Commerce Comm'n*, 296 Ill. App. 3d 942, 950 (Ill. App. Ct. 1998).

St. Louis Pipeline alleges that the continued operation of the pipeline would have an impact upon traffic safety by reducing truck traffic and reduce the need for road construction and maintenance of roadways in the State of Illinois. (Hopgood, Direct T, p. 5-6). St. Louis Pipeline also stated that it is not feasible to supply jet fuel to the airport by truck, alleging that the same would cause "major road congestion, result in additional road wear, and create additional safety hazards." (SDR, Ans. 11).

Dennis Hopgood agreed on cross examination that the public in general does not benefit from its pipeline and that there are only two airlines that benefit from St. Louis Pipeline providing fuel to Lambert airport. (Hopgood, Cross, p. 208). St. Louis Pipeline supplies less than ten percent (10%) of fuel to Lambert airport. (Hopgood, Cross, p. 212). St. Louis Pipeline transports 1.8 million gallons of fuel a month to Lambert. This amounts to a mere eight (8) or nine (9) tanker trucks a day, or roughly one per hour. (Hopgood, Cross, p. 210). Therefore, St. Louis Pipeline's argument that replacing the fuel it supplies by pipeline by truck transportation of fuel, or that this method would cause "major road congestion" is utterly unconvincing. There is another pipeline that

provides jet fuel to Lambert (Hopgood, Cross, p. 213). St. Louis Pipeline's pipeline is a six inch pipe, the other pipeline is a ten (10) inch pipe. (Hopgood, Cross, p. 212). St. Louis Pipeline's six inch pipe can supply approximately 470,000 gallons per twenty-four hour period, but currently only provides approximately 60,000 gallons per day. (SDR, Ans. 2). Presumably, the other 10 inch pipeline has the ability to supply the additional fuel in the event that St. Louis Pipeline is required to cease operations, as the reverse is true. Lambert airport also receives fuel from as far as Kansas City by tanker trucks. (Hopgood, Cross, p. 213). If the two airlines cannot get the fuel from St. Louis Pipeline, they can get it from other sources. (Hopgood, Cross, p. 209). There is no market or demand for the pipeline in the Metro East, Illinois area. (Hopgood, Cross, p. 217).

As to public need, this case is similar to the facts of *Lakehead Pipeline Co. v. Illinois Commerce Commission*, 296 Ill.App.3d 942, 696 N.E.2d 345, 231 Ill.Dec. 353 (3rd Dist. 1998). In that case, Lakehead Pipeline sought to expand its pipeline system within the State of Illinois. Unlike St. Louis Pipeline, Lakehead Pipeline sought the issuance of a certificate of good standing prior to the anticipated construction. In *Lakehead*, William Gould, a senior economic analyst for the Commission testified that the interest of refiners, shippers, and producers should be viewed as business interests rather than public interests. The examiner recommended the certificate be granted, however, the examiner's recommendation was rejected. The Commission agreed with the analysis proposed by Mr. Gould that public need must be assessed not by looking to the needs of any individual or number of individuals, but by looking to the public at large since "the public...is greater than a limited number of market players." The Commission concluded that Lakehead failed to support its claim that the expanded line would have a positive price effect on the market for refined products and that since the consuming public did not lack an adequate supply of refined petroleum products at adequate rates, and there was no shortage or crises, no public need for the expansion

existed.

In the present case, St. Louis Pipeline has failed to support its claim that the pipeline would have an impact upon traffic safety by significantly reducing truck traffic, and has failed to support its claim that one tanker truck per hour would reduce the need for road construction and maintenance of roadways in the State of Illinois. The jet fuel transportation service is already provided by another pipeline, as well as by tanker trucks.

**ST. LOUIS PIPELINE CORPORATIONS REQUEST
PURSUANT TO 220 ILCS 5/8-503**

The second portion of St. Louis Pipeline's Petition requests that the Commission enter an order pursuant to Section 8-503 of the PUA authorizing and directing Petitioner to construct, install, and *maintain* an approximately eight-mile segment of the pipeline between Hartford-Wood River, Illinois and the Illinois/Missouri border at or near the Chain of Rocks-Mississippi Bridge, Madison County, Illinois.

The word "maintain" cannot be found in Section 8-503. Section 8-503 does not authorize the Commission to enter an order authorizing and directing St. Louis Pipeline to "maintain" its pipeline. This concern was pointed out to Staff. However, Staff's Initial Brief quotes Section 8-503 and states in one sentence without any discussion its opinion that Petitioner has satisfied the requirements contained in Section 8-503 of the Act. Additional analysis is required.

Section 8-503 states, in pertinent part, as follows:

Whenever the Commission, after a hearing, shall find that additions, extensions, repairs or improvements to, or changes in, the existing plant, equipment, apparatus, facilities or other physical property of any public utility or of any 2 or more public utilities are necessary and ought reasonably to be made or that a new structure or structures is or are necessary and should be erected, to promote the security or convenience of its employees or the public, or in any other way to secure adequate service or facilities, the Commission

shall make and serve an order authorizing or directing that such additions, extensions, repairs, improvements or changes be made, or such structure or structures be erected at the location, in the manner and within the time specified in said order; ...

Clearly, the statute envisions a public utility request an Order from the Commission prior to the anticipated construction taking place. St. Louis Pipeline has not requested that the Commission grant an order approving any future anticipated additions, extensions, repairs, improvements, or changes to the pipeline. In fact, St. Louis pipeline is not wanting to construct or install anything at this time. The entire pipeline is already in place and has been operational for some time.

Instead, St. Louis Pipeline is requesting that the Commission retroactively rubber stamp the construction of a pipeline that took place over 35 years ago, and to rubber stamp the relocation of the pipeline that took place in approximately 1998 over property owned by MESD. Nothing in the PUA, Commission regulations or orders allow such an *ex post facto* Order. The only reason for St. Louis Pipeline requesting such relief is that an order under Section 8-503 is a prerequisite to an order authorizing the use of eminent domain under Section 8-509. St. Louis Pipeline's attempt to corrupt the statutory scheme envisioned by the legislature is transparent. The request for relief under Section 8-503 is therefore not properly raised at this time, and the requested relief should be denied.

ST. LOUIS PIPELINE CORPORATION'S REQUEST FOR EMINENT DOMAIN AUTHORITY

St. Louis Pipeline again raises the argument that it is entitled to take property owned, or devoted to a public use by MESD. That issue has twice been decided in MESD's favor, and is no longer an issue in this proceeding. To the extent the Commission desires to rehash this argument, MESD adopts and incorporates into its reply brief the arguments set forth in its motion to dismiss and initial brief with regard to the authority of the Commission to authorize eminent domain over public property.

However, there is an additional reason to refuse to authorize St. Louis Pipeline to exercise eminent domain, whether the property in question is public or private that requires the Commission's consideration. As previously stated, the only reason for St. Louis Pipeline requesting relief under Section 8-503 is that Section 8-503 is a prerequisite to an order authorizing the use of eminent domain under Section 8-509. Section 8-509 provides, in pertinent part, as follows:

When necessary for the construction of any alterations, additions, extensions or improvements ordered or authorized under Section 8-503 or 12-218 of this Act, any public utility may enter upon, take or damage private property in the manner provided for by the law of eminent domain...(emphasis added).

According to the plain language of the statute, eminent domain can only be authorized when necessary for the construction of any alterations, additions, extensions or improvements ordered or authorized under Section 8-503. In the present case, the entire pipeline is already in place and has been operational for quite some time. St. Louis Pipeline has not alleged that it requires the property for any additional construction to take place. Since the pipeline is already in place and there are no future projects planned, eminent domain cannot be necessary for the construction of any alterations, additions, extensions or improvements. Section 8-509 simply does not authorize the exercise of eminent domain absent the necessity for future construction.

Instead, St. Louis Pipeline desires authority to exercise eminent domain solely as a post-construction bargaining tool. However, Section 8-509 does not confer eminent domain on utilities just because they fail to successfully renegotiate expired easements. Since its request under Section 8-503 should be denied, so must its request for the exercise of eminent domain authority under Section 8-509.

The Illinois Commerce Commission does not have the jurisdiction to enter an order that would grant a public utility the authority to exercise eminent domain over public property, or

property held for any public use, nor does the Illinois Commerce Commission have the authority to order eminent domain absent the utility demonstrating its necessity for future construction. Therefore, the requested relief pursuant to Section 8-509 of the PUA must be denied.

CONCLUSION

Despite Petitioner's statements to the contrary, this case is not only about money. By filing its Petition, St. Louis Pipeline Corporation put itself on trial. In fact, money is not an issue to be resolved by the Commission in this proceeding. More importantly, this case is about a corporation that has operated an eight-mile segment of pipeline within the State of Illinois since the 1970's without obtaining the required certificate to operate as a common carrier by pipeline. A corporation that relocated, replaced, constructed and installed a portion of pipeline in 1998 without first seeking authority from the Commission. A corporation that has offered no excuse for its noncompliance with the PUA. The case is about a corporation that desires to use the PUA and the Illinois Commerce Commission's rules and regulations only when it sees a financial benefit in doing so, but ignores the same otherwise. We trust the Commission will consider these factors in making its determination with regard to St. Louis Pipeline's Petition.

WHEREFORE, Metro East Sanitary District hereby requests the Illinois Commerce Commission deny St. Louis Pipeline Corporation's Petition, and for such further relief as the Commission deems necessary.

Respectfully submitted,
METRO EAST SANITARY DISTRICT

By: 
One of Its Attorneys

Todd A. Neilson #06278121
CALLIS, PAPA, HALE, SZEWCZYK,
& DANZINGER, P.C.

1326 Niedringhaus Avenue

P.O. Box 1326

Granite City, IL 62040

(618) 452-1323

(618) 452-8024 FAX